

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**UNITED STATES OF AMERICA,**

Case No. 2:17-cr-00005-KJD-NJK

**Plaintiff,**

V.

SETH WITTNER,

**Defendant.**

## ORDER

Presently before the Court is Defendant's Motion to Reconsider Imposed Sentence (#23).

15 The Government filed a response (#25). Defendant claims this Court erred in sentencing him  
16 when it considered “the entirety” of an evaluation of Defendant prepared by a clinical and  
17 forensic psychologist, Dr. Mark Chambers. This evaluation was attached to the sentencing  
18 memorandum submitted by Defendant (#17). At sentencing, the Court imposed a low-end term  
19 of incarceration of 78 months.

Under Federal Rule of Criminal Procedure 35(c), “the court may correct a sentence that resulted from arithmetical, technical, or other clear error.” Rule 35(c) “clearly is intended to allow a district court to modify a sentence only in very limited instances and *not* merely to ‘reconsider sentencing issues.’” United States v. Barragan-Mendoza, 174 F.3d 1024, 1028 (9th Cir. 1999). “Rule 35(c) is intended to permit the district court to correct ‘obvious’ sentencing

1 errors, ‘but not to reconsider, to change its mind, or to reopen issues previously resolved under  
2 the guidelines, where there is no error.’” United States v. Aguirre, 213 F.3d 1122, 1126 (9th Cir.  
3 2000) (quoting United States v. Portin, 20 F.3d 1028, 1030 (9th Cir. 1994)).

4 Defendant puts forth no evidence of any such Rule 35(c) error, but instead suggests that  
5 the Court’s consideration of his admissions made to Dr. Chambers and contained in his  
6 evaluation is “punish[ing] [him] for being honest.” (#23, at 2). Defendant argues “[p]unishing  
7 defendants for statements they make while seeking help from a treating therapist sends the wrong  
8 message to other defendants.” (#23, at 2).

9 Defendant received a sentence on the low-end of the guideline range,<sup>1</sup> and he himself  
10 submitted Dr. Chambers’s evaluation as part of his sentencing memorandum. (#17, at 11–17).  
11 Defendant may not submit Dr. Chambers’s evaluation for only the points he believes to be  
12 favorable to him— had Defendant not wanted the Court to consider all of his admissions, he  
13 could have chosen not to submit the report for consideration. Regardless, Defendant has not been  
14 treated unfairly, and his claim presents no legal basis for reconsideration. Thus, his imposed  
15 sentence must stand.

16 Accordingly, IT IS HEREBY ORDERED that Defendants Motion for Reconsideration of  
17 Imposed Sentence (#23) is **DENIED**.

18 Dated this 1st day of May, 2018.

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24 Kent J. Dawson  
United States District Judge

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26 <sup>1</sup> “Based on a total offense level of 28 and a Criminal History Category of I, the Guideline range is 78 to 97  
months with a supervised release range of 5 years to life.” Sentencing Transcript, #27, at 6.